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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID SUMMER, Derivatively on Behalf of )  
Behalf of YAHOO! INC., )

Plaintiff, )

v. )

MARISSA A. MAYER, DAVID FILO, )  
KENNETH A. GOLDMAN, ERIC K. )  
BRANDT, MAYNARD G. WEBB, JR., )  
THOMAS J. MCINERNEY, JANE E. SHAW, )  
CATHERINE J. FRIEDMAN, TOR R. )  
BRAHAM, EDDY W. HARTENSTEIN, )  
RICHARD S. HILL, JEFFREY C. SMITH, )  
MAX R. LEVCHIN, SUSAN M. JAMES, )  
CHARLES R. SCHWAB, H. LEE SCOTT, )  
JR., and PETER LIGUORI, )

Defendants, )

and )

YAHOO! INC., a Delaware corporation, )

Nominal Defendant. )

Case No.

VERIFIED STOCKHOLDER DERIVATIVE  
COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS, BREACH  
OF FIDUCIARY DUTIES, AND UNJUST  
ENRICHMENT

DEMAND FOR JURY TRIAL

**NATURE AND SUMMARY OF THE ACTION**

1  
2           1.       This is a stockholder derivative action brought by plaintiff on behalf of Yahoo! Inc.  
3 ("Yahoo" or the "Company") against certain of its officers and directors for violations of the federal  
4 securities laws, breach of fiduciary duties, unjust enrichment, and other violations of law at the  
5 expense of the Company. These wrongs have resulted in hundreds of millions of dollars in damages  
6 to Yahoo and other damages, such as to its reputation and goodwill. Further, it threatens the massive  
7 \$4.8 billion acquisition of Yahoo's core assets by Verizon Communications Inc. ("Verizon").

8           2.       In 2013 and 2014, Yahoo was subjected to two massive data breaches. In the 2014  
9 data breach, 500 million Yahoo accounts were compromised. The 2013 data breach was even  
10 bigger, compromising approximately *one billion* accounts. The 2013 and 2014 data breaches are  
11 the largest ever reported. Yahoo has attributed the hack to a "state-sponsored actor."

12           3.       The stolen information includes Yahoo users' names e-mail addresses, telephone  
13 numbers, dates of birth, passwords, and, in some cases, security questions and answers (the "Private  
14 Information"). Though the Company says there was no bank account information or payment card  
15 data stolen, the Private Information theft can still have significant detrimental effects on a Yahoo  
16 user. The Private Information can be used by hackers and others unscrupulous characters to create  
17 false identities. In addition, many people use the same passwords for multiple accounts and thus,  
18 the same password used for a Yahoo account can be used for an online bank account.

19           4.       Just as troubling as the data breaches themselves, however, is that the Company  
20 failed to notify users and the public in general about these data breaches for years. Yahoo has  
21 admitted that it "identified that a state-sponsored actor had access to the Company's network in late  
22 2014." Yet, it waited until September 22, 2016, to notify its users about the 2014 data breach. The  
23 Company did not inform users about the 2013 data breach until December 14, 2016. Thus, for two  
24 years after Yahoo learned of the data breaches, Yahoo's users continued using their yahoo accounts  
25 unaware that hackers had access to their personal information including, in some cases, passwords.

26           5.       In addition to being morally wrong, Yahoo's delay in notifying its users of the  
27 data breaches was unreasonable and therefore illegal. Yahoo's affected users have been quick to act.  
28

1 As of the Company's most recent quarterly filing, twenty-three consumer class actions have been  
2 filed against Yahoo thus far.

3 6. The data breaches and the Company's knowledge of the data breaches since 2014,  
4 also renders defendants' statements about Yahoo's data security, including the efficacy of its  
5 encryption of user data, false and misleading. Upon disclosure of the data breaches, Yahoo's market  
6 capitalization fell 4.21%, or \$1,770,315,612, between September 22, 2016 and September 26, 2016,  
7 and 6.11%, or \$2,385,311,205 between December 14, 2016 and December 15, 2016. As a result, an  
8 investor in the Company's stock has filed a class action against Yahoo and certain of its insiders  
9 for securities fraud. In addition, the U.S. Securities and Exchange Commission ("SEC") is looking  
10 into the timeliness of the Company's disclosures.

11 7. Now that the defendants have finally alerted the public to the data breaches, Yahoo  
12 notified many of its users that they must change their passwords. Experts have stated that rather  
13 than changing passwords, Yahoo's users are likely to drop the service altogether. Indeed, for years,  
14 defendants have admitted in Yahoo's public filings that "[if] our security measures are breached,  
15 our products and services may be perceived as not being secure, users and customers may curtail or  
16 stop using our products and services, and we may incur significant legal and financial exposure."  
17 The financial impact of the data breaches has led to speculation that Verizon may walk away from its  
18 offer to purchase most of Yahoo for \$6 billion.<sup>1</sup>

### 19 **JURISDICTION AND VENUE**

20 8. Pursuant to 28 U.S.C. §1331 and section 27 of the Securities Exchange Act of 1934  
21 (the "Exchange Act"), this Court has jurisdiction over the claims asserted herein for violations of  
22 sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder. This  
23 Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. §1367.

24 9. Jurisdiction is also conferred by 28 U.S.C. §1332. Complete diversity among the  
25

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26 <sup>1</sup> See, e.g., Reinhardt Krause, *Yahoo Discloses New, Bigger Data Breach; Verizon May Scrap:*  
27 *Reports*, Investor's Bus. Daily (Dec. 15, 2016) [http://www.investors.com/news/technology/yahoo-](http://www.investors.com/news/technology/yahoo-admits-one-billion-accounts-breached-verizon-deal-in-jeopardy/)  
28 [admits-one-billion-accounts-breached-verizon-deal-in-jeopardy/](http://www.investors.com/news/technology/yahoo-admits-one-billion-accounts-breached-verizon-deal-in-jeopardy/).

1 parties exists and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2 10. This Court has jurisdiction over each defendant named herein because each  
3 defendant is either a corporation that conducts business in and maintains operations in this District,  
4 or is an individual who has sufficient minimum contacts with this District to render the exercise of  
5 jurisdiction by the District courts permissible under traditional notions of fair play and substantial  
6 justice.

7 11. Venue is proper in this Court in accordance with 28 U.S.C. §1391(a) because:  
8 (i) Yahoo maintains its principal place of business in this District; (ii) one or more of the defendants  
9 either resides in or maintains executive offices in this District; (iii) a substantial portion of the  
10 transactions and wrongs complained of herein, including the defendants' primary participation in the  
11 wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties  
12 owed to Yahoo, occurred in this District; and (iv) defendants have received substantial compensation  
13 in this District by doing business here and engaging in numerous activities that had an effect in this  
14 District.

15 **INTRADISTRICT ASSIGNMENT**

16 12. A substantial portion of the transactions and wrongdoings which give rise to the  
17 claims in this action occurred in the County of Santa Clara, and as such, this action is properly  
18 assigned to the San Jose division of this Court.

19 **THE PARTIES**

20 **Plaintiff**

21 13. Plaintiff David Summer is a stockholder of Yahoo and has continuously held stock  
22 since March 7, 2013. Plaintiff is a citizen of Massachusetts.

23 **Nominal Defendant**

24 14. Nominal defendant Yahoo is a Delaware corporation with principal executive  
25 offices located at 701 First Avenue, Sunnyvale, California. Accordingly, Yahoo is a citizen of  
26 Delaware and California. Yahoo together with its consolidated subsidiaries is a guide to digital  
27 information discovery, focused on informing, connecting, and entertaining users through its search,  
28 communications, and digital content products. Yahoo's revenue is generated principally from search

and display advertising. Yahoo continues to manage and measure its business geographically, principally in the Americas, EMEA (Europe, Middle East, and Africa), and Asia Pacific. As of September 30, 2016, Yahoo had approximately 8,500 full-time employees and approximately 600 contractors.

## **Defendants**

15. Defendant Marissa A. Mayer ("Mayer") is Yahoo's Chief Executive Officer ("CEO"), President, and director and has been since July 2012. Defendant Mayer knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. While in possession of material, non-public information concerning Yahoo's true business health, defendant Mayer sold 1,236,000 shares of her stock for \$51,401,708.40 in proceeds. Yahoo paid defendant Mayer the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2015	\$1,000,000	\$1,125	\$14,495,494	\$19,935,777	\$0	\$548,711	\$35,981,107
2014	\$1,000,000	\$0	\$11,752,355	\$28,194,288	\$1,108,800	\$28,065	\$42,083,508
2013	\$1,000,000	\$2,250	\$8,312,316	\$13,847,283	\$1,700,000	\$73,863	\$24,935,712

Defendant Mayer is a citizen of California.

16. David Filo ("Filo") is Yahoo's Chief Yahoo and has been since March 1995 and a director and has been since June 2014. Defendant Filo founded Yahoo in March 1995. Defendant Filo was also a director from March 1995 to February 1996. Defendant Filo knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Filo the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2015	\$1	\$0	\$0	\$0	\$0	\$0	\$1
2014	\$1	\$0	\$0	\$0	\$0	\$0	\$1
2013	\$1	\$0	\$0	\$0	\$0	\$0	\$1

Defendant Filo is a citizen of California.

17. Kenneth A. Goldman ("Goldman") is Yahoo's Chief Financial Officer ("CFO") and has been since October 2012. Defendant Goldman knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. While in possession of material, non-public information concerning Yahoo's true business health, defendant Goldman sold 350,194 shares of his stock for \$12,629,632.56 in proceeds. Yahoo paid defendant Goldman the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2015	\$600,000	\$0	\$3,357,738	\$10,992,129	\$0	\$4,650	\$14,954,517
2014	\$600,000	\$0	\$2,813,080	\$9,327,427	\$300,000	\$4,549	\$13,045,056
2013	\$600,000	\$0	\$2,597,612	\$2,290,527	\$500,000	\$4,615	\$5,992,754

Defendant Goldman is a citizen of California.

18. Eric K. Brandt ("Brandt") is Yahoo's Chairman of the Board of Directors (the "Board") and has been since January 2017 and a director and has been since March 2016. Defendant Brandt is Chairman of Yahoo's Audit and Finance Committee and has been since April 2016 and a member of that committee and has been March 2016. Defendant Brandt knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Brandt is a citizen of California.

19. Defendant Maynard G. Webb, Jr. ("Webb") is Yahoo's Chairman of the Board Emeritus and has been since January 2017 and a director and has been since February 2012.

Defendant Webb was also Yahoo's Chairman of the Board from August 2013 to January 2017 and was also Yahoo's Interim Chairman of the Board from April 2013 to August 2013. Defendant Webb was also a member of Yahoo's Audit and Finance Committee from at least May 2013 to at least May 2014 and from February 2016 to April 2016. Defendant Webb knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Webb the following compensation as a director:

<b>Fiscal Year</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Total</b>
2015	\$509,908	\$0	\$509,908
2014	\$219,982	\$256,794	\$476,776
2013	\$219,978	\$210,671	\$430,649

Defendant Webb is a citizen of California.

20. Defendant Thomas J. McInerney ("McInerney") is a Yahoo director and has been since April 2012. Defendant McInerney is also a member of Yahoo's Audit and Finance Committee and has been since at least May 2013. Defendant McInerney knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant McInerney the following compensation as a director:

<b>Fiscal Year</b>	<b>Fees Paid in Cash</b>	<b>Stock Awards</b>	<b>Total</b>
2015	\$70,000	\$239,990	\$309,990
2014	\$90,000	\$219,982	\$309,982
2013	\$90,000	\$219,978	\$309,978

Defendant McInerney is a citizen of New York.

21. Defendant Jane E. Shaw ("Shaw") is a Yahoo director and has been since June 2014. Defendant Shaw knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Shaw the following compensation as a director:

<b>Fiscal Year</b>	<b>Fees Paid in Cash</b>	<b>Stock Awards</b>	<b>Total</b>
2015	\$95,000	\$239,990	\$334,990
2014	\$42,460	\$219,982	\$262,442

Defendant Shaw is a citizen of California.

22. Defendant Catherine J. Friedman ("Friedman") is a Yahoo director and has been since March 2016. Defendant Friedman knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Friedman is a citizen of California.

23. Defendant Tor R. Braham ("Braham") is a Yahoo director and has been since April 2016. Defendant Braham is also a member of Yahoo's Audit and Finance Committee and has been since April 2016. Defendant Braham knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Braham is a citizen of California.

24. Defendant Eddy W. Hartenstein ("Hartenstein") is a Yahoo director and has been since April 2016. Defendant Hartenstein knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Hartenstein is a citizen of California.

25. Defendant Richard S. Hill ("Hill") is a Yahoo director and has been since April 2016. Defendant Hill knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Hill is a citizen of Nevada.

26. Defendant Jeffrey C. Smith ("Smith") is a Yahoo director and has been since April 2016. Defendant Smith knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a



reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Smith is a citizen of New York.

27. Defendant Max R. Levchin ("Levchin") was a Yahoo director from December 2012 to December 2015. Defendant Levchin knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Levchin the following compensation as a director:

<b>Fiscal Year</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Total</b>
2015	\$295,487	\$0	\$295,487
2014	\$219,982	\$68,679	\$288,661
2013	\$219,978	\$73,338	\$293,316

Defendant Levchin is a citizen of California.

28. Defendant Susan M. James ("James") was a Yahoo director from January 2010 to June 2016. Defendant James was also Chairman of Yahoo's Audit and Finance Committee from at least May 2013 to April 2016. Defendant James knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. While in possession of material, non-public information concerning Yahoo's true business health, defendant James sold 20,000 shares of her stock for \$879,911.89 in proceeds. Yahoo paid defendant James the following compensation as a director:

<b>Fiscal Year</b>	<b>Fees Paid in Cash</b>	<b>Stock Awards</b>	<b>Total</b>
2015	\$95,000	\$239,990	\$334,990
2014	\$115,000	\$219,982	\$334,982
2013	\$0	\$334,894	\$334,894

Defendant James is a citizen of California.

29. Defendant Charles R. Schwab ("Schwab") was a Yahoo director from June 2014 to February 2016. Defendant Schwab was also a member of Yahoo's Audit and Finance Committee from June 2014 to February 2016. Defendant Schwab knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data

security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Schwab the following compensation as a director:

<b>Fiscal Year</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Total</b>
2015	\$309,923	\$0	\$309,923
2014	\$219,982	\$37,969	\$257,951

Defendant Schwab is a citizen of California.

30. Defendant H. Lee Scott, Jr. ("Scott") was a Yahoo director from June 2014 to June 2016. Defendant Scott knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Yahoo paid defendant Scott the following compensation as a director:

<b>Fiscal Year</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Total</b>
2015	\$314,898	\$0	\$314,898
2014	\$219,982	\$40,075	\$260,057

Defendant Scott is a citizen of Florida.

31. Defendant Peter Liguori ("Liguori") was a Yahoo director from April 2012 to June 2014. Defendant Liguori knowingly or recklessly made improper statements in the Company's press releases and public filings concerning the Company's data security and failed to reveal in a reasonable amount of time that the Company's users' data was exposed in the data breaches. Defendant Liguori is a citizen of Pennsylvania.

32. The defendants identified in ¶¶15-17 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶15-16, 18-31 are referred to herein as the "Director Defendants." The defendants identified in ¶¶18-20, 28-29 are referred to herein as the "Audit and Finance Committee Defendants." Collectively, the defendants identified in ¶¶15-31 are referred to herein as the "Individual Defendants."

## **DUTIES OF THE INDIVIDUAL DEFENDANTS**

### **Fiduciary Duties of the Individual Defendants**

33. By reason of their positions as officers, directors, and/or fiduciaries of Yahoo and because of their ability to control the business and corporate affairs of Yahoo, the Individual Defendants owed Yahoo and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Yahoo in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Yahoo and its stockholders so as to benefit all stockholders equally and not in furtherance of their personal interest or benefit.

34. Each officer and director of the Company owes to Yahoo and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's operations, performance, management, projections, and forecasts so that the market price of the Company's stock would be based on truthful and accurate information. During fiscal 2015, the Board met nineteen times.

### **Additional Duties of the Audit and Finance Committee Defendants**

35. The Audit and Finance Committee Defendants, defendants Brandt, Webb, McInerney, Braham, James, and Schwab, owed specific duties to Yahoo, under its Charter in effect since January 17, 2014.

36. Foremost, the Audit and Finance Committee is to assist in the "oversight of (i) the integrity of the Company's financial statements, (ii) the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company, [and] (iii) the Company's compliance with legal and regulatory requirements." The Audit and Finance Committee is also required to review and discuss with management the Company's administrative, operational, and accounting controls, including any factors that could materially affect the Company's internal controls and any special steps adopted in light of the discovery of any material weaknesses. The

Audit and Finance Committee must:

(a) review the Company's financial risk assessment and financial risk management policies;

(b) review the Company's quarterly and annual financial statements;

(c) review major issues regarding accounting principles and financial statements presentations;

(d) review the Company's earnings press releases; and

(e) meet periodically with Yahoo's General Counsel to review legal and regulatory matters, including any matters that may have a material impact on the financial statements of the Company.

37. Finally, the Audit and Finance Committee is required to evaluate whether the Company is operating in accordance with its prescribed policies, procedures, and codes of conduct.

**Control, Access, and Authority**

38. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Yahoo, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company.

39. Because of their advisory, executive, managerial, and directorial positions with Yahoo, each of the Individual Defendants had access to adverse, non-public information about the financial condition, operations, and improper representations of Yahoo, including information regarding the several factors negatively impacting the Company's performance.

40. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Yahoo, and was at all times acting within the course and scope of such agency.

**Reasonable and Prudent Supervision**

41. To discharge their duties, the officers and directors of Yahoo were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Yahoo

1 were required to, among other things:

2 (a) ensure that the Company complied with its legal obligations and requirements,  
3 including acting only within the scope of its legal authority and disseminating truthful and accurate  
4 statements to the investing public;

5 (b) conduct the affairs of the Company in an efficient, business-like manner so as  
6 to make it possible to provide the highest quality performance of its business;

7 (c) properly and accurately guide investors and analysts as to the true financial  
8 condition of the Company at any given time, including making accurate statements about the  
9 Company's financial results;

10 (d) remain informed as to how Yahoo conducted its operations, and, upon receipt  
11 of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in  
12 connection therewith, and take steps to correct such conditions or practices and make such  
13 disclosures as necessary to comply with securities laws; and

14 (e) ensure that the Company was operated in a diligent, honest, and prudent  
15 manner in compliance with all applicable laws, rules, and regulations.

16 **Breaches of Duties**

17 42. Each Individual Defendant, by virtue of his or her position as a director and/or  
18 officer, owed to the Company and to its stockholders the fiduciary duty of loyalty and good faith and  
19 the exercise of due care and diligence in the management and administration of the affairs of the  
20 Company, as well as in the use and preservation of its property and assets. The conduct of the  
21 Individual Defendants complained of herein involves a knowing and culpable violation of their  
22 obligations as directors and officers of Yahoo, the absence of good faith on their part, and a reckless  
23 disregard for their duties to the Company and its stockholders that the Individual Defendants were  
24 aware or should have been aware posed a risk of serious injury to the Company. The conduct of the  
25 Individual Defendants who were also officers and/or directors of the Company have been ratified by  
26 the remaining Individual Defendants who collectively comprised all of Yahoo's Board.

27 43. The Individual Defendants breached their duty of loyalty and good faith by allowing  
28 defendants to cause, or by themselves causing, the Company to misrepresent its financial results and

1 delay the reporting of the data breaches, as detailed herein, and by failing to prevent the Individual  
2 Defendants from taking such illegal actions. In addition, as a result of defendants' illegal actions  
3 and course of conduct, the Company is now the subject of consumer class actions and a securities  
4 class action alleging securities law violations in connection with the improper financial reporting.  
5 As a result, Yahoo has expended, and will continue to expend, significant sums of money.

6 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

7 44. In committing the wrongful acts alleged herein, the Individual Defendants have  
8 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and  
9 conspired with one another in furtherance of their common plan or design. In addition to the  
10 wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further  
11 aided and abetted and/or assisted each other in breaching their respective duties.

12 45. During all times relevant hereto, the Individual Defendants, collectively and  
13 individually, initiated a course of conduct that was designed to and did: (i) conceal the fact that the  
14 Company had experienced massive data breaches; (ii) enhance the Individual Defendants' executive  
15 and directorial positions at Yahoo and the profits, power, and prestige that the Individual  
16 Defendants enjoyed as a result of holding these positions; and (iii) deceive the Company's users and  
17 the investing public, including stockholders of Yahoo, regarding the Individual Defendants'  
18 management of Yahoo's operations. In furtherance of this plan, conspiracy, and course of conduct,  
19 the Individual Defendants, collectively and individually, took the actions set forth herein.

20 46. The Individual Defendants engaged in a conspiracy, common enterprise, and/or  
21 common course of conduct. During this time, the Individual Defendants caused the Company to  
22 issue improper financial results based upon the failure to disclose the several factors negatively  
23 impacting the Company's performance.

24 47. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,  
25 and/or common course of conduct was, among other things, to disguise the Individual Defendants'  
26 violations of federal securities laws, breach of fiduciary duties, and unjust enrichment, and to  
27 conceal adverse information concerning the Company's operations, financial condition, and future  
28 business prospects.

1           48.     The Individual Defendants accomplished their conspiracy, common enterprise,  
 2 and/or common course of conduct by causing the Company to purposefully, recklessly, or  
 3 negligently release improper statements. Because the actions described herein occurred under the  
 4 authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial  
 5 participant in the conspiracy, common enterprise, and/or common course of conduct complained of  
 6 herein.

7           49.     Each of the Individual Defendants aided and abetted and rendered substantial  
 8 assistance in the wrongs complained of herein. In taking such actions to substantially assist the  
 9 commission of the wrongdoing complained of herein, each Individual Defendant acted with  
 10 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that  
 11 wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

#### 12                           **FACTUAL BACKGROUND**

13           50.     Yahoo describes itself as a "guide to digital information discovery." The Company  
 14 strives to create "highly personalized experiences" which "help[s] users discover the information that  
 15 matters most to them around the world." Yahoo users can create accounts with Yahoo to access  
 16 different services provided by the Company. To create an account, a user must provide Yahoo with  
 17 private information, including a username and password.

18           51.     The Company's revenue is generated principally from display and search  
 19 advertising. Yahoo places "cookies" on users' computers when they login. The cookies contain  
 20 personalized information that allows Yahoo to identify a user. Cookies can contain a great detail of  
 21 information, such as browsing activity and information users enter into form fields. A specific type  
 22 of cookie, an "authentication cookie," occurs after a user authenticates itself and tells a website it  
 23 can send sensitive information to a user.

24           52.     The Company does not hide that it collects its users' personal information. It  
 25 explicitly states that "Yahoo collects personal information when you register with Yahoo" and  
 26 "when you register we ask for information such as your name, email address, birth date, gender, ZIP  
 27 code, occupation, industry and personal interests. For some financial products and services we  
 28 might also ask for your address, Social Security number, and information about your assets." The

1 Company also admits that it analyzes and stores all of its users' communications content, including  
2 e-mail content. Further, "Yahoo automatically receives and records information from your  
3 computer and browser, including your IP address, Yahoo cookie information, software and hardware  
4 attributes, and the page you request." Thus, the amount of personal private data that the Company  
5 stores about its users is massive. It is also well known that it has this information since Yahoo  
6 publicly states it collects this information, making the Company a prime target for hackers.  
7 Individuals, however, feel comfortable using Yahoo's services because it claims on its website that it  
8 is "committed to ensuring [users'] information is protected and [it] applies safeguards in accordance  
9 with applicable law" and "[the Company has] physical, electronic, and procedural safeguards that  
10 comply with federal regulations to protect personal information about you."

11 53. On July 25, 2016, Yahoo announced that it agreed to sell its core assets to Verizon  
12 for \$4.8 billion. As part of the agreement, Yahoo represented to Verizon that it was unaware of any  
13 security breaches.

#### 14 **THE DATA BREACHES AND RESPONSE**

15 54. Yahoo has been subjected to hacks and data breaches in the past. In 2012, over  
16 400,000 unencrypted Yahoo usernames and passwords were stolen and posted on a public website.  
17 In 2013, Yahoo Japan suffered a security breach, which exposed the personal data of twenty-two  
18 million users.

19 55. In late 2014, a "state-sponsored actor" stole the account information of 500 million  
20 Yahoo users. The account information included names, e-mail addresses, telephone numbers, dates  
21 of birth, passwords, and security questions and answers. The public was unaware of the data breach  
22 at the time. Instead, it was not until rumors of the breach began to leak out to the public in August  
23 2016, when a hacker by the name of "Peace" claimed to be selling data from 200 million Yahoo  
24 users online that people began looking into whether Yahoo's users' data was illegally accessed.



56. In early August, Yahoo stated that it was "aware of [Peace's] claim" and was "working to determine the facts" but provided no other details.<sup>2</sup> According to reports, Yahoo's awareness of "Peace's" claim extended to the Company's CEO, defendant Mayer.<sup>3</sup> And, in fact, reports claimed that defendant Mayer and key executives had been engaged "from the very beginning."

57. Nearly two months later, on September 22, 2016, Yahoo confirmed that data associated with 500 million users' accounts were stolen. Yahoo told users to change their password and security questions and review their accounts for suspicious activity. Verizon stated that Yahoo told it about the breach just two days earlier.

58. Yahoo was heavily criticized for taking two months to report the breach to the public. Senator Richard Blumenthal stated that "[i]f Yahoo knew about the hack as early as August, and failed to coordinate with law enforcement, taking this long to confirm the breach is a blatant betrayal of their users' trust."<sup>4</sup> Senator Blumenthal called on law enforcement and regulators to "investigate whether Yahoo may have concealed its knowledge of this breach in order to artificially bolster its valuation in its pending acquisition by Verizon."

59. While Senator Blumenthal's anger over a two month delay was justified, it turns out that the Company had actually known about the 2014 data breach soon after it occurred. The Company revealed in its Quarterly Report on Form 10-Q filed with the SEC on November 9, 2016, that it identified that a state sponsored actor had access to Yahoo's network *in late 2014*.

60. Yahoo's delay violated various state laws. Forty-seven states require companies to alert consumers when they have been hacked. The exact notice period required under state law

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<sup>2</sup> Tom Mendelsohn, *Yahoo Investigating Claimed Breach and Data Dump of 200 Million Users*, ARS Technica (Aug. 3, 2016) <https://arstechnica.com/security/2016/08/yahoo-email-data-breach-dump/>.

<sup>3</sup> Madhumita Murgiz, et al., *Marissa Mayer Knew of Yahoo Breach Probe in July*, Financial Times (Sept. 23, 2016) <https://www.ft.com/content/d0d07444-81aa-11e6-bc52-0c7211ef3198>.

<sup>4</sup> Seth Fiegerman, *Yahoo Says 500 Million Accounts Stolen*, CNN Tech (Sept. 23, 2016) <http://money.cnn.com/2016/09/22/technology/yahoo-data-breach/>.

1 varies, with some states requiring notice within thirty or forty-five days, while others use general  
2 language, such as "as soon as expedient" and "without unreasonable delay." Yahoo's terms of  
3 service state that users agree that the laws of the state of California will govern all claims between a  
4 user and Yahoo. Under California Civil Code section 1798.82, Yahoo was required to inform users  
5 of the data breach "in the most expedient time possible and without unreasonable delay." Under no  
6 circumstance could a two year delay be considered expedient or reasonable. Unsurprisingly then,  
7 soon after the public learned of the data breach and Yahoo sitting on this information, the Company  
8 was sued in multiple class actions. According to the Company's most recent Quarterly Report on  
9 Form 10-Q, twenty-three consumer class actions lawsuits have been filed against Yahoo thus far.

10 61. The bad news continued for the Company. On December 14, 2016, Yahoo disclosed  
11 that in a separate incident in 2013, hackers stole data from at least one billion accounts. The  
12 attackers forged the cookies that Yahoo places on user computers, including the authentication  
13 cookies. By forging the authentication cookies the hackers could gain access to the targeted  
14 accounts without ever having the user's password and would also allow the hacker to remain logged  
15 into a user's account indefinitely.

16 62. Questions about the data breaches persist to this day. It is not just the public that  
17 defendants are stonewalling, but U.S. Senators as well. Yahoo's representatives were supposed to  
18 meet with members of the Senate Commerce Committee on January 31, 2017. The Company  
19 abruptly canceled that meeting on January 28, 2017. Senators John Thune and Jerry Moran wrote to  
20 defendant Mayer expressing their dismay at this "last minute" cancellation. The Senators, in their  
21 letter, stated that the Company's last minute cancellation "has prompted concerns about [Yahoo's]  
22 willingness to deal with Congress with complete candor about [the data breaches]." Further, the  
23 letter stated that "[d]espite several inquiries by Committee staff seeking information about the  
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1 security of Yahoo! user accounts, company officials have thus far been unable to provide answers  
2 to many basic questions."<sup>5</sup>

### 3 DEFENDANTS' IMPROPER STATEMENTS

4 63. Defendants' failure to acknowledge the data breaches while repeatedly pointing out  
5 that such breaches could have a material effect on it rendered Yahoo's public statements improper.  
6 On November 12, 2013, Yahoo filed a Quarterly Report on Form 10-Q with the SEC, announcing  
7 the Company's financial and operating results for the quarter ended September 30, 2013. The  
8 Quarterly Report acknowledges the potential harm that might result from a data breach. Despite  
9 acknowledging the materiality of a data breach to the Company, it does not mention that Yahoo was  
10 victim to the largest ever data breach. In particular, Yahoo stated:

11 *If our security measures are breached, our products and services may be*  
12 *perceived as not being secure, users and customers may curtail or stop using*  
13 *our products and services, and we may incur significant legal and financial*  
14 *exposure.*

15 Our products and services involve the storage and transmission of Yahoo's users'  
16 and customers' personal and proprietary information in our facilities and on our  
17 equipment, networks and corporate systems. Security breaches expose us to a  
18 risk of loss of this information, litigation, remediation costs, increased costs for  
19 security measures, loss of revenue, damage to our reputation, and potential  
20 liability. Our user data and corporate systems and security measures have been  
21 and may in the future be breached due to the actions of outside parties (including  
22 cyber attacks), employee error, malfeasance, a combination of these, or otherwise,  
23 allowing an unauthorized party to obtain access to our data or our users' or  
24 customers' data. Additionally, outside parties may attempt to fraudulently induce  
25 employees, users, or customers to disclose sensitive information in order to gain  
26 access to our data or our users' or customers' data.

27 Any breach or unauthorized access could result in significant legal and financial  
28 exposure, increased remediation and other costs, damage to our reputation and a  
loss of confidence in the security of our products, services and networks that  
could potentially have an adverse effect on our business. Because the techniques  
used to obtain unauthorized access, disable or degrade service, or sabotage systems  
change frequently or may be designed to remain dormant until a predetermined event  
and often are not recognized until launched against a target, we may be unable to

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26 <sup>5</sup> Robert McMillan, *Senators Question Yahoo's Candor on Data Breach*, Wall St. J. (Feb. 13, 2017,  
27 9:41 a.m.) [https://www.wsj.com/articles/senators-question-yahoos-candor-on-data-breach-148678](https://www.wsj.com/articles/senators-question-yahoos-candor-on-data-breach-1486788867)  
28 8867.

1 anticipate these techniques or implement adequate preventative measures. If an  
2 actual or perceived breach of our security occurs, the market perception of the  
3 effectiveness of our security measures could be harmed and we could lose users and  
customers.

4 64. Defendants Mayer, Goldman, Webb, James, Levchin, Liguori, and McInerney made  
5 the same statements without acknowledging the 2013 data breach in the Company's Annual Report  
6 on Form 10-K filed with the SEC on February 28, 2014.

7 65. In fact, for the next three years, every one of the Company's quarterly filings and  
8 yearly filings contains nearly the exact same language. Despite Yahoo's knowledge of the data  
9 breaches, no mention of them ever occurs until September 2016. Even then, as described above, it  
10 was only after rumors began circulating that a hacker named "Peace" was selling information linked  
11 to hundreds of millions of Yahoo users' accounts. The Individual Defendants' failure to include this  
12 known material event that admitted could significantly harm the Company in its public filings  
13 renders them materially improper.

14 66. In particular, the following public filings are misleading, Yahoo's: (a) Quarterly  
15 Report on Form 10-Q announcing the Company's financial and operating results for the quarter  
16 ended March 31, 2014; (b) Quarterly Report on Form 10-Q announcing the Company's financial  
17 and operating results for the quarter ended June 30, 2014; (c) Quarterly Report on Form 10-Q  
18 announcing the Company's financial and operating results for the quarter ended September 30, 2014;  
19 (d) Annual Report on Form 10-K announcing the Company's financial and operating results for  
20 the quarter and year ended December 31, 2014, which was signed by defendants Mayer, Goldman,  
21 Webb, Filo, James, Levchin, McInerney, Schwab, Scott, and Shaw; (e) Quarterly Report on Form  
22 10-Q announcing the Company's financial and operating results for the quarter ended March 31,  
23 2015; (f) Quarterly Report on Form 10-Q announcing the Company's financial and operating  
24 results for the quarter ended June 30, 2015; (g) Quarterly Report on Form 10-Q announcing the  
25 Company's financial and operating results for the quarter ended September 30, 2015; (h) Annual  
26 Report on Form 10-K announcing the Company's financial and operating results for the quarter  
27 and year ended December 31, 2015, signed by defendants Mayer, Goldman, Webb, Filo, James,  
28 McInerney, Scott, and Shaw; (i) Quarterly Report on Form 10-Q announcing the Company's

1 financial and operating results for the quarter ended March 31, 2016; and (j) Quarterly Report on  
 2 Form 10-Q announcing the Company's financial and operating results for the quarter ended June 30,  
 3 2016.

4 67. In addition, on July 25, 2016, Yahoo announced that it entered into a purchase  
 5 agreement with Verizon. Pursuant to the agreement, Verizon will acquire the operating business of  
 6 Yahoo for \$4.8 billion. The announcement of the purchase attached the actual purchase agreement.  
 7 The purchase agreement specifically states that Yahoo does not know of any data breaches. In  
 8 particular, it states:

9 [A]ny incidents of, or third party claims alleging, (i) Security Breaches, unauthorized  
 10 access or unauthorized use of any of Seller's or the Business Subsidiaries'  
 11 information technology systems or (ii) loss, theft, unauthorized access or acquisition,  
 12 modification, disclosure, corruption, or other misuse of any Personal Data in Seller's  
 13 or the Business Subsidiaries' possession, or other confidential data owned by Seller  
 14 or the Business Subsidiaries (or provided to Seller or the Business Subsidiaries by  
 15 their customers) in Seller's or the Business Subsidiaries' possession, in each case (i)  
 16 and (ii) that could reasonably be expected to have a Business Material Adverse  
 17 Effect. Neither Seller nor the Business Subsidiaries have notified in writing, or to the  
 18 Knowledge of Seller, been required by applicable Law or a Governmental Authority  
 19 to notify in writing, any Person of any Security Breach. To the Knowledge of Seller,  
 20 neither Seller nor the Business Subsidiaries have received any notice of any claims,  
 21 investigations (including investigations by a Governmental Authority), or alleged  
 22 violations of Laws with respect to Personal Data possessed by Seller or the Business  
 23 Subsidiaries, in each case that could reasonably be expected to have a Business  
 24 Material Adverse Effect.

#### 19 **THE DISCLOSURE OF THE DATA BREACHES** 20 **DECIMATES YAHOO'S MARKET CAPITALIZATION**

21 68. As stated above, on September 22, 2016, Yahoo disclosed the 2014 data breach. On  
 22 this news, Yahoo's market capitalization fell \$1,770,315,612, a 4.21% drop.

23 69. On December 14, 2016, Yahoo disclosed the massive 2013 data breach. On this  
 24 news, Yahoo's market capitalization fell \$2,385,311,205, a 6.11 % drop.

#### 25 **THE MATERIALLY MISLEADING PROXY STATEMENTS**

26 70. On April 29, 2015, defendants Filo, James, Levchin, Mayer, McInerney, Schwab,  
 27 Scott, Shaw, and Webb, caused Yahoo to file with the SEC a Proxy Statement on Schedule 14A in  
 28 connection with the 2015 Annual Meeting of Stockholders, held on June 24, 2015 (the "2015

Proxy"). In the 2015 Proxy, defendants solicited stockholder votes to, among other things, re-elect defendants Filo, James, Levchin, Mayer, McInerney, Schwab, Scott, Shaw, and Webb, and to vote against a stockholder proposal to authorize stockholders to act by written consent. Defendants issued materially misleading statements with respect to the solicited votes.

71. The 2015 Proxy stated the following in support of re-electing defendants Filo, James, Levchin, Mayer, McInerney, Schwab, Scott, Shaw, and Webb:

**The Board's Role in Risk Oversight**

The Board, as a whole and through its committees, serves an active role in overseeing management of the Company's risks. The Company's officers are responsible for day-to-day risk management activities. The full Board monitors risks through regular reports from each of the committee chairs and the General Counsel, and is apprised of particular risk management matters in connection with its general oversight and approval of corporate matters. The Board and its committees oversee risks associated with their respective areas of responsibility, as summarized below. Each committee meets with key management personnel and representatives of outside advisers as required.

The Audit Committee reviews risks and exposures associated with financial matters, particularly financial reporting, tax, accounting, disclosures, internal control over financial reporting, investment guidelines and credit and liquidity matters, programs and policies relating to legal compliance and strategy, and the Company's operational infrastructure, particularly reliability, business continuity and capacity.

72. In support of its proposal for adopting the right for stockholders to act by written consent, the stockholders claimed that the ability to act by written consent would improve the Company's corporate governance and that "[t]aking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle. A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle." Defendants Filo, James, Levchin, Mayer, McInerney, Schwab, Scott, Shaw, and Webb stated in the 2015 Proxy that they recommended voting against the proposal because "[the Board's] existing strong corporate governance practices make adoption of this proposal unnecessary."

73. The 2015 Proxy's claims that: (i) the Board was effective in overseeing Yahoo's business affairs; (ii) the Audit Committee was effective in fulfilling its oversight responsibilities

1 with respect to internal control over financial reporting and disclosure controls and procedures; and  
2 (iii) the Board had strong corporate governance practices were misleading because the 2015 Proxy  
3 omitted any disclosures reflecting or acknowledging the data breaches, the delay in alerting users,  
4 how those would affect the Company's business, and the lack of internal controls necessitating  
5 disclosure of the data breaches.

6 74. The 2015 Proxy harmed Yahoo by interfering with the proper governance on its  
7 behalf that follows the free and informed exercise of the stockholders' right to vote for directors. As  
8 a result of the Individual Defendants' misleading statements in the 2015 Proxy, Yahoo's  
9 stockholders voted to re-elect defendants Filo, James, Levchin, Mayer, McInerney, Schwab, Scott,  
10 Shaw, and Webb, and against the right to act by written consent.

11 75. On May 23, 2016, defendants James, Scott, Braham, Brandt, Filo, Friedman,  
12 Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb, caused Yahoo to file with the SEC a  
13 Proxy Statement on Schedule 14A in connection with the 2016 Annual Meeting of Stockholders,  
14 held on June 30, 2016 (the "2016 Proxy"). In the 2016 Proxy, defendants solicited stockholder votes  
15 to, among other things, re-elect defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill,  
16 Mayer, McInerney, Shaw, Smith, and Webb. Defendants issued materially misleading statements  
17 with respect to the solicited votes.

18 76. The 2016 Proxy highlighted the Company's claimed progress on its turnaround  
19 efforts, by among other things, pointing to the Company's one billion monthly users and growth  
20 businesses, many of which require Yahoo accounts. These statements were misleading, because  
21 they did not discuss the data breaches and the likely decline it would cause to these very businesses  
22 and monthly users, despite knowing about the breach for over a year at this point. In particular, the  
23 2016 Proxy stated, "We continued our progress on our turnaround efforts to restore the Company to  
24 sustainable growth focusing our resources on our growth oriented businesses, stabilizing declining  
25 revenues, and sunseting unprofitable products and services. We also maintained our base of over  
26 one billion monthly users. Our growth businesses—Mobile, Video, Native, and Social ("Mavens")—  
27 delivered more than \$1.6 billion of [generally accepted accounting principles] revenue in 2015."  
28



77. Defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb also discussed their plan for 2016, stating that they plan to "*Play to Our Strengths to Grow User Engagement*." Prioritize growing engagement with our enormous user base of more than one billion monthly users." Again, the 2016 Proxy did not discuss the data breaches, how those data breaches would affect user engagement or the Company's user base, or how it planned to deal with those, despite the material effect notice of the data breaches would have on this strategic plan.

78. In addition to the above, in seeking the election of defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb, the 2016 Proxy stated the following:

#### **The Board's Role in Risk Oversight**

The Board, as a whole and through its committees, serves an active role in overseeing management of the Company's risks. The Company's officers are responsible for day-to-day risk management activities. The full Board monitors risks through regular reports from each of the committee chairs and the General Counsel, and is apprised of particular risk management matters in connection with its general oversight and approval of corporate matters. The Board and its committees oversee risks associated with their respective areas of responsibility, as summarized below. Each committee meets with key management personnel and representatives of outside advisers as required.

The Audit Committee reviews risks and exposures associated with financial matters, particularly financial reporting, tax, accounting, disclosures, internal control over financial reporting, investment guidelines and credit and liquidity matters, programs and policies relating to legal compliance and strategy, and the Company's operational infrastructure, particularly reliability, business continuity and capacity.

79. These claims were misleading because the 2016 Proxy omitted any disclosures reflecting or acknowledging the data breaches, the delay in alerting users, how those would affect the Company's business, and the lack of internal controls necessitating disclosure of the data breaches.

80. The 2016 Proxy harmed Yahoo by interfering with the proper governance on its behalf that follows the free and informed exercise of the stockholders' right to vote for directors. As a result of defendants James, Scott, Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer,



1 McInerney, Shaw, Smith, and Webb's misleading statements in the 2016 Proxy, Yahoo's  
2 stockholders voted to re-elect defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer,  
3 McInerney, Shaw, Smith, and Webb.

4 81. On September 9, 2016, the defendants filed with the SEC a Preliminary Proxy  
5 Statement on Schedule 14A (the "Preliminary Proxy") recommending stockholders vote in favor of  
6 the Yahoo-Verizon asset purchase. The Preliminary Proxy attached a copy of the Stock Purchase  
7 Agreement. The Stock Purchase Agreement continued to specifically state that Yahoo does not  
8 know of any data breaches. The Preliminary Proxy does not provide any guidance that this  
9 statement in the Stock Purchase Agreement is incorrect. Further, the Preliminary Proxy does not  
10 state whether Yahoo alerted Verizon to the data breaches and what steps Verizon is taking in  
11 response to learning about the data breaches. Without this information, the Preliminary Proxy is  
12 misleading and incomplete. Without this information, stockholders cannot make an informed vote  
13 on whether to approve the Yahoo-Verizon transaction.

14 **DAMAGES TO YAHOO CAUSED BY THE INDIVIDUAL DEFENDANTS**

15 82. As a result of the Individual Defendants' wrongful conduct, Yahoo disseminated  
16 improper financial statements that misrepresented the Company's knowledge of the data breaches.  
17 These improper statements have devastated Yahoo's credibility as reflected by the Company's more  
18 than 4.21% market capitalization loss following the acknowledgment on September 22, 2016, of  
19 2014 data breach, and 6.11% market capitalization loss following the acknowledgment of the 2013  
20 data breach on December 14, 2016. Additionally, Yahoo is now the subject of a securities class  
21 action alleging securities laws violations in connection with the improper financial reporting.

22 83. Further, Yahoo's failure to timely alert its users of the data breaches violated  
23 numerous state laws. Yahoo is now subject to consumer class actions that allege it violated these  
24 disclosure obligations and that the Company failed to take appropriate steps to keep its users' data  
25 safe. The Company will face substantial costs in connection with the consumer and securities class  
26 action lawsuits.

27 84. The Company is now also being investigated by the SEC concerning the disclosure of  
28 the data breaches. Yahoo will incur substantial costs in responding to this investigation.

1           85.     Yahoo will also likely lose users and the associated revenues from those users  
2 reviewing advertising, as a result of the data breaches. As explained above, when users have to  
3 change passwords because of a data breach, many simply cancel their account altogether.

4           86.     Yahoo also paid substantial compensation to directors and officers that breached their  
5 fiduciary duty and violated federal securities laws. The retention of this payment by the Individual  
6 Defendants is unfair and unjust.

7           87.     Finally, commentators have called into question whether Verizon will go through  
8 with its acquisition of Yahoo's core assets in light of the data breaches. As stated above, Yahoo  
9 represented to Verizon that it was unaware of any data breaches at the time it entered into the Stock  
10 Purchase Agreement. That statement was false. On January 23, 2017, Yahoo stated that it now  
11 expects the Verizon purchase to close in the second quarter for 2017, pushing back the closing from  
12 the first quarter of 2017.

13                   **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

14           88.     Plaintiff brings this action derivatively in the right and for the benefit of Yahoo to  
15 redress injuries suffered, and to be suffered, by Yahoo as a direct result of violations of the federal  
16 securities laws, breach of fiduciary duties, and unjust enrichment, as well as the aiding and abetting  
17 thereof, by the Individual Defendants. Yahoo is named as a nominal defendant solely in a derivative  
18 capacity. This is not a collusive action to confer jurisdiction on this Court that it would not  
19 otherwise have.

20           89.     Plaintiff will adequately and fairly represent the interests of Yahoo in enforcing and  
21 prosecuting its rights.

22           90.     Plaintiff was a stockholder of Yahoo at the time of the wrongdoing complained of,  
23 has continuously been a stockholder, and is a current Yahoo stockholder.

24           91.     The current Board of Yahoo consists of the following eleven individuals:  
25 defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith,  
26 and Webb. Plaintiff has not made any demand on the present Board to institute this action because  
27 such a demand would be a futile, wasteful, and useless act, as set forth below.

28

**Demand Is Excused Because Defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb Face a Substantial Likelihood of Liability for Their Misconduct**

92. As alleged above, defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb violated section 14(a) of the Exchange Act by at least negligently making the misstatements and omissions in the 2015 Proxy and 2016 Proxy. Accordingly, demand is excused because a majority of the Board faces a substantial likelihood of liability.

93. Defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb also breached their fiduciary duty of loyalty by making and allowing improper statements to be made in the Company's public statements, including its Annual and Quarterly Reports, and Proxy Statements. In addition, these Board members allowed the Company to delay announcing the data breaches, despite the Company's knowledge of it, exposing Yahoo to massive liability in the consumer class actions. Accordingly, demand is futile.

94. Audit and Finance Committee Defendants Braham, Brandt, McInerney, and Webb, as members of the Audit Committee, were responsible under the Audit Committee Charter in effect during the relevant period for reviewing and approving quarterly and annual financial statements and Yahoo's internal controls, as described above. Despite these duties, the Audit Committee Defendants knowingly or recklessly reviewed and approved improper financial statements. The Audit Committee Defendants also reviewed and approved Yahoo's ineffective internal controls. Accordingly, these defendants face a sufficiently substantial likelihood of liability for breach of their fiduciary duty of loyalty. Demand upon these defendants is futile.

95. Plaintiff has not made any demand on the other stockholders of Yahoo to institute this action since such demand would be a futile and useless act for at least the following reasons:

(a) Yahoo is a publicly held company with over 954 million shares outstanding and thousands of stockholders;

(b) making demand on such a number of stockholders would be impossible for plaintiff who has no way of finding out the names, addresses, or phone numbers of stockholders; and

(c) making demand on all stockholders would force plaintiff to incur excessive expenses, assuming all stockholders could be individually identified.

### **COUNT I**

#### **Against Defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb for Violation of Section 14(a) of the Exchange Act**

96. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

97. The section 14(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of Director Defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb. The section 14(a) Exchange Act claims alleged herein do not allege and do not sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to the non-fraud claims.

98. Director defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, Mayer, McInerney, Shaw, Smith, and Webb negligently issued, caused to be issued, and participated in the issuance of materially misleading written statements to stockholders which were contained in the 2015 Proxy and 2016 Proxy.

99. The misleading information contained in the 2015 Proxy and 2016 Proxy were material to Yahoo's stockholders in determining whether or not to elect defendants Braham, Brandt, Filo, Friedman, Hartenstein, Hill, James, Levchin, Mayer, McInerney, Schwab, Scott, Shaw, Smith, and Webb. This information was also material to the integrity of these directors that were proposed for election to the Board. The proxy solicitation process in connection with the 2015 Proxy and 2016 Proxy was an essential link in the re-election of nominees to the Board.

100. Plaintiff, on behalf of Yahoo, thereby seeks relief for damages inflicted upon the Company based upon the misleading 2015 Proxy and 2016 Proxy.

101. In addition, plaintiff seeks to enjoin the stockholder vote on the Verizon-Yahoo Stock Purchase Agreement unless and until the Preliminary Proxy is no longer misleading.





1 breaching their fiduciary duties owed to Yahoo.

2 117. Plaintiff, as a stockholder and representative of Yahoo, seeks restitution from these  
3 defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and  
4 other compensation obtained by these defendants, and each of them, from their wrongful conduct  
5 and fiduciary breaches.

6 118. Plaintiff, on behalf of Yahoo, has no adequate remedy at law.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands for a judgment as follows:

9 A. Against the Individual Defendants and in favor of the Company for the amount of  
10 damages sustained by the Company as a result of the Individual Defendants' violation of securities  
11 law, breaches of fiduciary duties, and unjust enrichment;

12 B. Preliminarily and permanently enjoining defendants and all persons acting in  
13 concert with them from proceeding with, consummating, or closing the Verizon-Yahoo asset  
14 purchase;

15 C. Directing the Individual Defendants to disseminate a proxy concerning the Verizon-  
16 Yahoo asset purchase that does not contain any untrue statements of material fact and that states all  
17 material facts required in it or necessary to make the statements contained therein not misleading;

18 D. Directing Yahoo to take all necessary actions to reform and improve its corporate  
19 governance and internal procedures to comply with applicable laws and to protect Yahoo and its  
20 stockholders from a repeat of the damaging events described herein, including, but not limited to,  
21 putting forward for stockholder vote, resolutions for amendments to the Company's By-Laws or  
22 Articles of Incorporation and taking such other action as may be necessary to place before  
23 stockholders for a vote the following Corporate Governance Policies:

24 1. a proposal to strengthen the Board's supervision of operations and develop and  
25 implement procedures for greater stockholder input into the policies and guidelines of the Board;

26 2. a provision to permit the stockholders of Yahoo to nominate at least three  
27 candidates for election to the Board;

28





VERIFICATION

I, David Summer, hereby declare as follows:

I am a stockholder of Yahoo! Inc. and have been a stockholder continuously since March 7, 2013. I have retained competent counsel and am ready, willing, and able to pursue this action vigorously on behalf of Yahoo! Inc. I have reviewed the Verified Stockholder Derivative Complaint for Violations of the Federal Securities Laws, Breach of Fiduciary Duties, and Unjust Enrichment (the "Complaint"). Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the Complaint is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Signed and Accepted:

Dated: 2/16/17

  
\_\_\_\_\_  
DAVID SUMMER